

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1052, 7071, 7078, 7852.2, 7881, 7923, 8026, 8046, 8101, 8425, and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 7050, 7070, 7071, 7075, 7078, 7082, 7083, 7086, 7701, 7708, 7923, 8026, 8081, 8420, 8425, 8429.5, and 8429.7, of said Code, proposes to amend sections 53.03, 149, 149.1, Title 14, California Code of Regulations, relating to Market Squid Fishery Restricted Access Program.

Informative Digest/Policy Statement Overview

Item 1: Provide for a Non-Transferable Market Squid Light Boat Permit Classification

In response to recent public requests, the Fish and Game Commission (Commission) proposes to consider authorizing a Non-Transferable Market Squid Light Boat Permit category consistent with the intent of the grandfather clause, with qualifying criteria proposed as follows.

A Non-Transferable Market Squid Light Boat Permit may be issued to an individual that meets all of the following requirements:

- is the owner of a commercial fishing vessel that has been registered with the Department of Fish and Game (Department) pursuant to Fish and Game Code Section 7881 at the time of application;
- the individual must have been issued a Market Squid Vessel Permit or a Squid Light Boat Owner's Permit for the 2004-05 permit year for use on that vessel that has not been suspended or revoked;
- pursuant to Fish and Game Code Section 8101, the individual must have been licensed as a California commercial fisherman for at least 20 years at the time of application;
- the individual must have submitted to the Department at least one market squid light boat logbook form (DFG 149b) with fishing activity dated from January 1, 2001 through August 27, 2004 for that vessel.
- Only logbook forms from a vessel with a Market Squid Vessel Permit or a Squid Light Boat Owners Permit for the 2004-05 permit year that has not already qualified for issuance of a Transferable Market Squid Vessel Permit or a transferable Market Squid Brail Permit or a Transferable Market Squid Light Boat Permit are valid for consideration. Not more than one squid permit, regardless of the class of permit, may be placed on a particular vessel.

Proposed application criteria are as follows: All applications and permit fees for initial issuance of Non-Transferable Market Squid Light Boat Permits must be received by the Department, or, if mailed, postmarked on or before June 30, 2007. Applications and permit fees received by the Department, or, if mailed, postmarked from July 1 through July 31, 2007 will be assessed a \$250 late fee, notwithstanding Fish and Game Code Section 7852.2. Applications and permit fees received by the Department or postmarked after July 31, 2007 will be denied by the Department and returned to the applicant. Annual renewal procedures are as specified for other

Market Squid Permit classifications.

If the Commission adopts the proposal to include a Non-Transferable Light Boat Permit class, the Commission will establish a fee for the permit as described in Item 2 below.

Unlike Transferable Market Squid Light Boat Permits, the proposed regulations would not allow the holder of a Non-Transferable Market Squid Light Boat Permit to upgrade his or her permit to a Non-Transferable Market Squid Brail Permit upon payment of an upgrade fee.

Based on license sales records and logbook records, the Department estimates that two individuals will meet the proposed qualifying criteria for this permit class, although it is possible that up to six may qualify. The Department believes that addition of two permits to the 170 that are already authorized will have, overall, a negligible impact upon the squid resource and the other fishery participants. However, addition of any permits to the fishery adds to the fishery's capacity, and one identified goal of the squid FMP and restricted access program is to reduce excessive fishing capacity.

Item 2: Adjust permit fees for all commercial squid permit classes to adequately cover Department and Commission costs.

Arising from the ongoing and increased workload associated with maintaining the squid permit system and squid fishery management and enforcement, in order to more adequately cover costs, the Commission has agreed to consider increased permit fees for all classes of squid permits.

When the Commission adopted the limited entry program in 2004, the following annual permit fees were established in subsection 149.1(i), Title 14, California Code of Regulations (CCR):

Market Squid Vessel Permit - Transferable - \$2,000.
Market Squid Vessel Permit - Non-Transferable - \$1,000.
Market Squid Brail Permit - Transferable - \$2,000.
Market Squid Brail Permit - Non-Transferable - \$1,000.
Market Squid Light Boat Permit - Transferable - \$600.

Based on recent cost estimates, the Department proposes the Commission increase the fee for each permit class to an annual level of \$5,000 - \$8,000. This proposed fee range would also apply to the Non-Transferable Light Boat Permit category, if one is created.

Table 1 - Recent Squid Revenue to DFG - All Sources

	2003/04 Permit Year	2004/05 Permit Year	2005/06 Permit Year
Landing Tax Revenue (\$3.80 paid to Dept per ton)	\$228,900	\$204,800	\$300,900

Permit Sale			
Revenue	\$89,400	\$83,900	\$231,400
Total Revenue to			
DFG	\$318,300	\$288,700	\$532,300

As described in Table 1 above, revenue to the Department for commercial squid monitoring, management and enforcement activities come from two primary sources: the \$3.80 per-ton tax on landings established by the Legislature, and the sale of commercial squid fishery permits. Because the Legislature established this tax rate, the Commission does not have authority to alter it with its own regulations, leaving permit fees as the mechanism the Commission may use to acquire needed funds for squid programs.

For the 2005/2006 permit year, squid landings taxes and permit fees paid to the Department totaled \$532,300; which represented about 1.3 percent of the ex-vessel value of the fishery in that season.

However, a recent examination of Department-wide costs for all squid-related work indicates that costs, on average, have totaled approximately \$1,369,000 per year. Table 2 below itemizes these costs below and describes the tasks involved where costs are incurred.

**Table 2 - Comprehensive Cost Estimate for Management
Of the Market Squid Fishery and Resource
(Costs to All Department Functions)**

Specific Tasks or Services Provided	Region/Branch /Division Impacted	Annual Cost Estimate*
1. Market Squid Fishery Management Plan (FMP) Development and Implementation – Staff perform squid fishery monitoring and biological sampling, analyze catch data, maintain the fishery logbook program, comply with CEQA processes and requirements, and participate in state/federal cooperative management efforts (squid is also included in the federal Coastal Pelagics FMP). Participate in collaborative squid research activities as time and funding allow, and respond to ongoing industry and public inquiries. Also responsible for restricted access program development and analytical support required to maintain the restricted access program.	Marine Region - Market Squid Project	\$550,000 - \$964,000**
2. Commercial Fisheries Information System (commercial catch records and database management) – Staff perform data entry, error checking and database management required for approximately 4,000 squid landings each year. On request, staff provide catch information to fishermen, enforcement, courts, and licensing staff (for purposes of evaluating permit appeals). Staff are also responsible for development of landing receipt protocols and monitoring compliance.	Marine Region Biostatistical Unit	\$30,000

3. Marine Region Policy - CEA costs and support – Provides policy recommendations to the Directorate regarding squid management, FMP content, regulations, permit requirements and procedures. Also serves as the California representative on the PFMC and represents the Department in other inter-agency management and research issues involving squid. Directs and supervises marine staff working on squid, oversees budgets, and serves as point person for fishery industry meetings and matters involving the Commission. Includes costs for executive support.	Marine Region – CEAs and support	\$14,000
4. Marine Region Regulatory Costs – Staff draft regulations and supporting documents for the FMP and the restricted access program; respond to Commission requests for rule changes, and provide economic, fiscal and other analyses as requested.	Marine Region – Regulatory Unit	\$24,000
5. Marine Region License Counter and Administrative Support - Mailing and documentation of logbook records, provide license counter clerical assistance in Monterey and Los Alamitos, and respond to public inquiries.	Marine Region – Administrative function	\$6,000
6. Communication/Outreach costs – Maintain DFG website materials relating to the squid FMP, provide press releases, media responses and other information as needed for matters relating to squid science, research, fishery permit requirements, or fishing regulations.	Conservation Education Division	\$4,000
7. Enforcement Costs – Personnel and operating expenses associated with at-sea squid patrol for large boats, small boats, and aircraft. Land-based patrol needs include those for dockside investigation of vessels and squid processing operations. Additional operating costs include those needed for investigations, prosecution, and report filing. Patrol activities include enforcement of permit requirements and other regulations specific to the squid fishery, such as closed areas and weekend closures.	Enforcement Branch	\$523,000
8. Squid Permit Program – Issuance and tracking of six classes of squid permits, collection of fees, evaluation of permit transfer and upgrade requests. Respond to permit appeal requests made to the Department and the Commission. Staff also process annual permit renewals, respond to inquiries regarding permit requirements and transfer provisions, and develop the commercial regulations booklet and application forms annually.	License and Revenue Branch	\$102,000
9. Legal – Review of FMP and regulatory documents, respond to permitting and restricted access legal needs, and provide legal guidance to directorate. NOTE: Any litigation that may arise would substantially alter this cost estimate.	Legal Office	\$7,000
10. Legislative Affairs – Respond to proposed squid legislation; provide information to the Legislature and committees on the status of squid fishery management, inform directorate of proposed changes and develop policy recommendations.	Legislative Affairs Office	\$5,000
11. Directorate – Set Department policy relative to squid management, provide recommendations to the Commission,	Executive Office	\$15,000

and represent the Department in squid discussion items at Marine Resource Committee meetings, Fish and Game Commission meetings, and permit appeal hearings. Includes costs for executive assistance and WIFD Regulatory Unit.		
12. Distributed Administration - Costs to Department human resources for squid-specific personnel, accounting for squid programs, and budgets and audits functions relative to squid and squid landings. Staff track and process payment of quarterly squid landings taxes, determine allotments, track direct and indirect expenditures, and provide personnel support and services.	Human Resources, Accounting, Budgets and Audits Divisions	\$24,000
13. Information Technology (IT) - Maintain, enhance, modify and develop new components of the Commercial Fisheries Information System (CFIS) and other IT applications that support squid logbook and port sampling data, squid permits, commercial catch data, taxation and license compliance, and annual license and vessel registration renewals. In addition, staff analyze complex requests and generate ad hoc reports and extracts required to support the management of the Market Squid Fishery. Other staff functions that are impacted by this effort but not included in the cost estimate are server, network, and database administration and support, and PC support which provide critical IT infrastructure to Department staff.	Information Technology Branch	\$25,000
14. Fish and Game Commission – Set squid policy by adopting the FMP and supporting regulations, including those for the restricted access program. Hold Commission and Marine Resource Committee meetings throughout the state where squid management and policy are discussed. Hold permit appeal hearings and make decisions. Staff prepare regulatory documents, respond to public comments and inquiries, and fulfill other requirements of the Administrative Procedure Act.	Fish and Game Commission	\$40,000

Total Estimated Minimum Annual Costs = \$1,369,000

*Estimates derived by considering costs incurred over the past three permit years, as well as anticipated near-future costs. No adjustments for inflation or future cost increases are included.

** FMP implementation costs are provided as a range based on the extent to which funding would be provided for scientific research to be performed on a contract basis. Minimum baseline funding needs for squid monitoring and management under the FMP without any additional scientific research are estimated at \$550,000 annually. It should be noted that recent annual squid FMP expenditures have totaled only \$312,000 annually. These staffing levels continue to be inadequate to support the baseline monitoring items identified in the FMP, such as logbook and port sample data processing and analysis, and management needs.

To determine an appropriate fee level, Department costs must first be offset by the revenue anticipated to be taken in from landings taxes. Following from Table 1 above, the average amount earned from landings taxes over the past three seasons is approximately \$245,000.

Therefore, if minimum costs are \$1,369,000, the amount that would need to be generated from permit sales to fully cover these costs is (\$1,369,000 - \$245,000) or \$1,124,000. Since there are presently 170 permits, and the department might anticipate two additional permits to be sold with creation of a Non-Transferable Light Boat Permit Class, if all permits fees are set at the same level, a fee that might fully cover costs might be approximated by:

$(\$1,124,000/172 \text{ permits}) = \$6,535 \text{ per permit}$

At this time, the Department has provided a range of annual fee alternatives for each permit class of between \$5,000 and \$8,000 per squid permit. As it did in 2004, the Commission may again wish to select fees that differ depending on the class of the permit.

However, it should be noted that selecting a fee structure that results in an average cost of \$6,535 per permit would suggest that it is expected that the commercial squid fishery be responsible to cover all costs of the FMP, monitoring, and management of the squid fishery by itself, without any funds coming from other sources. However, other stakeholder groups have participated in discussions during the FMP development process, and during subsequent proceedings involving squid regulatory action.

For example, to the degree that the listed activities itemized in Table 2 are of benefit to recreational squid fisheries or to other recreational fishing opportunities that rely on squid management, it may be appropriate for the Commission to consider that when setting the fee level. The source of funds used in such instance would be Department Non-Dedicated Fish and Game Preservation Fund monies acquired by the sale of sport fishing licenses.

However, it should also be noted and consideration given to the fact that there is no direct source of funds paid to the Non-Dedicated Fish and Game Preservation from the environmental community, or from other non-consumptive resource stakeholders who do not purchase licenses. There is no permit that is issued for the non-consumptive use of the state's resources (i.e. birdwatching, whale watching, wildlife photography, hiking, kayaking, etc). So unless money is appropriated from the Legislature from the state's general fund for the Department and Commission's work on squid activities, there is no way to recover costs for management which may serve to benefit these stakeholders. To date, there has been no such appropriation made, and thus in all past years the costs have been absorbed by sport and commercial licensees.

Item 3: Update Market Squid Light Boat Logbook Form Number and Add Logbook forms to Title 14 Appendix with other Logbook forms.

Pursuant to subsection 149(b), Title 14, CCR, any squid permittee must complete and submit an accurate record of his/her squid fishing/lighting activities on a form (Market Squid Vessel Logbook - DFG 149a (9/01), or Market Squid Light Boat Logbook - DFG 149b (9/01). These forms are incorporated by reference into the regulations. The Department proposes to update the date of DFG 149b to (10/05), and to add both forms to the Appendix section, for clarity and

consistency with other logbook programs.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Museum of Natural History, Fleischmann Auditorium, 2559 Puesta del Sol Road, Santa Barbara, California, on Friday, August 25, 2006 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego, California, on October 6, 2006, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before September 29, 2006 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 4, 2006. All comments must be received no later than October 6, 2006 at the hearing in San Diego, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Fischer, or Sheri Tiemann at the preceding address or phone number. **Marci Yaremko, Marine Region, Department of Fish and Game, (805) 568-1220, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Item 1: Provide for a Non-Transferable Market Squid Light Boat Permit Classification

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action to create a Non-Transferable Market Squid permit class may result in issuing approximately 2 additional squid permits; which is likely to have a negligible if any impact on other squid permit holders or fish processors. Precise estimates cannot be quantified.

Item 2: Adjust permit fees for all commercial squid permit classes to adequately cover Department and Commission costs.

The proposed action is likely to have some statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. See discussion of costs to the Department and Commission of managing the market squid FMP and restricted access permit program in Section III(a) of this Initial Statement of Reasons. Current annual squid permit fees range in price from \$600 to \$2,000. The Department proposes an increase in these fees to a level between \$5,000 to \$8,000, and the level may be set differently depending on the class of permit. At present expenditure levels, a fee level of approximately \$6,535 per permit annually would fully cover program costs.

Item 3: Update Market Squid Light Boat Logbook Form Number and Add Logbook forms to Title 14 Appendix with other Logbook forms.

The proposed action will not have statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, since the change is only technical in nature.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The Department anticipates that Item 2, relating to proposed increases in permit fees, could have some minor but unquantifiable impact on jobs within the state, and possible elimination of existing businesses for those squid permit holders who do not find it economical to pay substantially increased annual permit fees. This might be the case for permittees who do not currently fish for squid to recoup the cost of the permit fee, and instead are holding the permit for other reasons than an interest in presently fishing for squid.

- (c) Cost Impacts on a Representative Private Person or Business:
See items (a) and (b) above.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:
See discussion in Section III (a) of the ISOR. The proposal to increase permit fees results directly from the State's need (Department and Commission) to more adequately costs of the current program.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required

to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: August 8, 2006

Jon K. Fischer
Assistant Executive Director